

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**December 8, 2003**

**MISC. ORDER 2003-008**

BY THE COURT:

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in the California Rules of Court, rules 75, 76, 77 and 78, during the absence of the Presiding Justice from the court on December 11, 15, 16 and 17, 2003, or until his return. (See Cal. Const. Art. 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

SCOTLAND, P.J.

- |                                  |  |                                    |
|----------------------------------|--|------------------------------------|
| <b>C040485</b>                   | <b>THE PEOPLE v. TILEHKOOR</b>   | <b>(Certified for Publication)</b> |
|                                  | The judgment (order revoking probation) is reversed.                                 |                                    |
|                                  | BLEASE, Acting P.J.  |                                    |
|                                  | I concur: Robie, J.  |                                    |
|                                  | I concur, because I agree that the revocation of probation is a criminal sanction... |                                    |
|                                  | Morrison, J.   |                                    |
| <br>                             |  |                                    |
| <b>C041156</b>                   | <b>THE PEOPLE v. HACK</b>  | <b>(Not for Publication)</b>       |
|                                  | The judgment is affirmed.  |                                    |
|                                  | RAYE, Acting P.J.  |                                    |
|                                  | We concur: Morrison, J.  |                                    |
|                                  | Hull, J.   |                                    |
| <br>                             |  |                                    |
| <b>C041713</b>                   | <b>THE PEOPLE v. FUNDERBURK</b>  | <b>(Not for Publication)</b>       |
|                                  | The judgment is affirmed.  |                                    |
|                                  | RAYE, Acting P.J.  |                                    |
|                                  | We concur: Morrison, J.  |                                    |
|                                  | Hull, J.   |                                    |
| <br>                             |  |                                    |
| <b>C041965</b>                   | <b>THE PEOPLE v. SMITH</b>   | <b>(Not for Publication)</b>       |
|                                  | The judgment is affirmed.  |                                    |
|                                  | SCOTLAND, P.J.   |                                    |
|                                  | We concur: Sims, J.  |                                    |
|                                  | Nicholson, J.  |                                    |
| <br>                             |  |                                    |
| <b>C042569</b><br><b>C042935</b> | <b>THE PEOPLE v. PETERSON</b>  | <b>(Not for Publication)</b>       |
|                                  | The judgment is affirmed.  |                                    |
|                                  | RAYE, J.   |                                    |
|                                  | We concur: Blease, Acting P.J.   |                                    |
|                                  | Robie, J.  |                                    |

**COURT OF APPEAL  
STATE OF CALIFORNIA  
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**The Minutes**

**December 8, 2003, continued**

- C042778      THE PEOPLE v. VALENCIA      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy to the Department of Corrections.  
ROBIE, J.  
We concur:    Scotland, P.J.  
                 Nicholson, J.
- C042266      TONI WOLFSON et al. v. SELMA WOLFSON      (Not for Publication)**  
The judgment is affirmed. Each party shall bear its own costs on appeal.  
RAYE, J.  
We concur:    Davis, Acting P.J.  
                 Nicholson, J.
- C043814      CROOKS-VOROS v. DIAMOND MOUNTAIN CASINO      (Not for Publication)**  
The judgment (order) is affirmed. Defendant shall recover costs on appeal. (Cal. Rules of Court, rule 27(a).)  
RAYE, J.  
We concur:    Blease, Acting P.J.  
                 Robie, J.

**December 9, 2003**

- C041989      THE PEOPLE v. HARNEY      (Not for Publication)**  
The judgment and order of commitment are affirmed.  
ROBIE, J.  
We concur:    Scotland, P.J.  
                 Hull, J.
- C042178      THE PEOPLE v. COOPER      (Not for Publication)**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur:    Nicholson, J.  
                 Robie, J.

**COURT OF APPEAL  
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**The Minutes**

**December 9, 2003, continued**

**C042437 CALIFORNIA STATE PERSONNEL BOARD et al. v. CALIFORNIA STATE  
EMPLOYEES ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO  
(Certified for Publication)**

The judgment is reversed.

SCOTLAND, P.J.

We concur: Sims, J.  
Robie, J.

**C043600 In re JESSICA O. et al.; SAN JOAQUIN COUNTY HUMAN SERVICES v.  
PAUL O. (Not for Publication)**

The juvenile court's appointment of a guardian ad litem for appellant and all subsequent orders are vacated. The matter is remanded to the juvenile court with directions to conduct a new jurisdictional hearing consistent with the opinion herein.

BLEASE, Acting P.J.

We concur: Raye, J.  
Robie, J.

**December 10, 2003**

**C042576 THE PEOPLE v. SILVA (Certified for Publication)**

The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy to the Department of Corrections.

SIMS, Acting P.J.

We concur: Davis, J.  
Hull, J.

**C042523 BLACK DIAMOND ASPHALT, INC. v. SAN JOAQUIN COUNTY SUPERIOR \  
COURT and ADAMES (Certified for Publication)**

The purported appeal is dismissed, and the matter is treated as a petition for a writ of mandate. Jurisdiction having been retained and the legal issue having been resolved on the merits, the petition is dismissed as moot. The parties shall bear their own costs.

SCOTLAND, P.J.

We concur: Sims, J.  
Robie, J.

**COURT OF APPEAL  
STATE OF CALIFORNIA  
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**The Minutes**

**December 10, 2003, continued**

- C043327      WOLF v. MAX      (Not for Publication)**  
The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 27 (a)(3).)  
SIMS, J.  
We concur:    Blease, Acting P.J.  
                 Davis, J.
- C043536 and  
C044137      In re M.R.; BUTTE COUNTY CHILDREN'S SERVICES DIVISION  
                 v. DEBORAH R.      (Not for Publication)**  
The orders denying the petition for modification and terminating parental rights are affirmed.  
HULL, J.  
We concur:    Sims, Acting P.J.  
                 Davis, J.
- C043736      In re MATTHEW M.; THE PEOPLE v. MATTHEW M.  
                 (Not for Publication)**  
The probationary conditions cited in part III of this opinion are stricken. The juvenile court is directed to amend its records accordingly and to forward an amended copy of the commitment order to the Director of the Youth Authority. In all other respects, the order of commitment is affirmed.  
RAYE, J.  
We concur:    Sims, Acting P.J.  
                 Davis, J.
- C044376      In re S.B.; SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY  
                 v. V.B. et al.      (Not for Publication)**  
The juvenile court's order is affirmed.  
BUTZ, J.  
We concur:    Davis, Acting P.J.  
                 Raye, J.
- C044419      In re A.H.; YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL  
                 SERVICES v. SARAH R.      (Not for Publication)**  
The juvenile court's orders are affirmed.  
BUTZ, J.  
We concur:    Scotland, P.J.  
                 Morrison, J.

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STATE OF CALIFORNIA  
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**The Minutes**

**December 11, 2003**

- C040402      THE PEOPLE v. DEPONTE      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to correct the abstract of judgment by striking the recitation about AIDS testing and to reflect, instead, that defendant was ordered to comply with the requirements of Penal Code section 296. The trial court is further directed to send a certified copy of the corrected abstract to the Department of Corrections.  
SCOTLAND, P.J.  
We concur:    Raye, J.  
                 Hull, J.
- C042047      THE PEOPLE v. BURNETT      (Not for Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur:    Raye, J.  
                 Morrison, J.
- C042427      THE PEOPLE v. AKHTAR      (Not for Publication)**  
The conviction on count 5 is reversed with directions to dismiss it. The judgment is otherwise affirmed. The trial court will prepare an amended abstract of judgment and forward it to the Department of Corrections.  
Davis, J.  
I concur:        Sims, J.  
I concur in the judgment and opinion except as to section I of the Discussion, as to which I concur in the result.  
BLEASE, Acting P.J.
- C042489      THE PEOPLE v. VALDEZ      (Not for Publication)**  
The judgment is affirmed.  
RAYE, J.  
We concur:    Scotland, P.J.  
                 Robie, J.
- C043207      THE PEOPLE v. GREEN      (Not for Publication)**  
The judgment is affirmed.  
BUTZ, J.  
We concur:    Scotland, P.J.  
                 Sims, J.

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**The Minutes**

**December 11, 2003, continued**

- C044155      THE PEOPLE v. SPRADLIN      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting that defendant was ordered to pay a \$29 theft fine, including a \$10 crime prevention fine, the \$17 corresponding state and county penalty assessments and a \$2 court surcharge, and to forward a certified copy of the amended abstract to the Department of Corrections.  
BUTZ, J.  
We concur: Scotland, P.J.  
Morrison, J.
- C043052      BLACKHURST et al. v. PRUNER      (Not for Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: Morrison, J.  
Robie, J.
- C043762      SPATES v. DAMERON HOSPITAL ASSOCIATION      (Certified for Publication)**  
The judgment is affirmed. (CERTIFIED FOR PUBLICATION)  
HULL, J.  
We concur: Sims, Acting P.J.  
Morrison, J.
- C044030      In re P.W.; BUTTE COUNTY CHILDREN'S SERVICES DIVISION v. DAVID D.      (Not for Publication)**  
The juvenile court's orders are affirmed.  
BUTZ, J.  
We concur: Scotland, P.J.  
Morrison, J.

**COURT OF APPEAL  
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**The Minutes**

**December 11, 2003, continued**

**C045170 SYLVIA R. v. SUPERIOR COURT OF SAN JOAQUIN COUNTY and SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY**

**(Not for Publication)**

The petition for extraordinary writ is granted. Let a peremptory writ of mandate issue directing the respondent court (1) to vacate its findings and orders entered on October 6, 2003, regarding disposition of the supplemental petition and setting the section 366.26 hearing; (2) to set a new dispositional hearing; and (3) to require the HSA to provide timely notice according to the provisions of the ICWA to the Standing Rock Sioux Tribe. No dispositional hearing shall occur prior to 10 days following the tribe's receipt of the notice of hearing. If, after proper notice, the tribe does not appear and assert a position in the case, the respondent court is directed to reinstate the prior findings and orders of disposition and the order setting the section 366.26 hearing, resetting that hearing to a new date if necessary.

DAVIS, Acting P.J.

We concur: Raye, J.  
Butz, J.

**December 12, 2003**

**C041257 THE PEOPLE v. ALEXANDER (Not for Publication)**

The abstract of judgment is ordered corrected to reflect count 2 is stayed pursuant to section 654. The clerk of the superior court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections. The judgment is affirmed in all other respects.

BLEASE, Acting P.J.

We concur: Sims, J.  
Nicholson, J.

**C042006 THE PEOPLE v. MILLER (Not for Publication)**

The judgment is reversed.

SIMS, Acting P.J.

We concur: Raye, J.  
Morrison, J.

**C042577 THE PEOPLE v. WOOD (Not for Publication)**

The judgment is affirmed. The clerk of the superior court is directed to amend the abstract of judgment as noted in footnote 3, above, and to send a copy of the amended abstract to the Department of Corrections.

NICHOLSON,

We concur: Blease, Acting P.J.  
Sims, J.

**COURT OF APPEAL  
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**The Minutes**

**December 12, 2003, continued**

**C042891      THE PEOPLE v. NAPLES      (Not for Publication)**

The judgment is affirmed.

Davis, J.

We concur:    Sims, Acting P.J.

Raye, J.

**C043144      THE PEOPLE v. MURPHY      (Not for Publication)**

The order dismissing count 2 is vacated, and the cause remanded for further proceedings consistent with this opinion. The court can then put its reasons on the record and once again dismiss count 2, or decline to dismiss the count and impose sentence.

DAVIS, J.

We concur:    Blease, Acting P.J.

Raye, J.

**C043049      ROBINSON et al. v. ROBINSON      (Not for Publication)**

The judgment is affirmed.

DAVIS, J.

I concur:      Morrison, J.

It seems to me that, because on this record it can be inferred decedent Don Robinson relied on the marriage settlement agreement with defendant Linda Robinson (his former wife) in not securing the necessary compliance with the Employee Retirement Income Security Act of 1974 (ERISA), defendant should be estopped from collecting the proceeds of decedent's pension plan (that otherwise would go to decedent's children pursuant to the marriage settlement agreement). But, ERISA does not permit that result. Hence, I concur, under the compulsion of federal law, in the opinion of my colleagues that the trial court's judgment in favor of defendant must be affirmed.

SCOTLAND, P.J.